

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 36

PRACTICE AND PROCEDURE OF THE  
BUSINESS REGISTRATION DIVISION

Subchapter 1 General Provisions

§16-36-1	Applicability
§16-36-2	Definitions
§16-36-3	Filings
§16-36-4	Forms and instructions
§16-36-5	Fees
§16-36-5.5	Action on documents submitted to the division; automatic approval; extension
§16-36-6	Repealed
§16-36-7	Repealed
§16-36-8	Repealed
§16-36-9	Repealed

Subchapter 2 Procedures

§16-36-10	Filing of domestic profit and nonprofit corporation annual reports
§16-36-11	Filing of foreign profit and nonprofit corporation annual reports
§16-36-11.3	Filing of domestic and foreign general partnership annual statements
§16-36-11.5	Filing of domestic and foreign limited partnership annual statements
§16-36-11.7	Filing of domestic and foreign limited liability partnership annual statements
§16-36-11.9	Filing of domestic and foreign limited liability company annual reports
§16-36-12	Foreign business entity name; registration ownership; assignment of registration
§16-36-12.5	Repealed

§16-36-1

Subchapter 3 Statements of Policy

- §16-36-13 Penalties
- §16-36-14 Requests for information
- §16-36-15 Registration of trademarks, service marks, prints, and labels;  
corporation names, partnership names, limited liability company names,  
and trade names
- §16-36-16 Investment clubs
- §16-36-17 Repealed

Subchapter 4 Administrative Procedure

- §16-36-18 Reconsideration

SUBCHAPTER 1

GENERAL PROVISIONS

§16-36-1 Applicability. This chapter shall apply to all programs, both present and future, in the business registration division, except that this chapter shall not apply to the administration of the sale of securities act, and the solicitation of funds from the public. [Eff 5/10/69; am 8/9/71; am and ren §16-36-1, 7/30/81; am and comp 12/21/84; comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §26-9)

§16-36-2 Definitions. As used in this chapter:

"Agricultural cooperative association annual report" means the annual report required to be delivered for filing by agricultural and fishing cooperative associations.

"Business entity" means and includes a profit corporation, nonprofit corporation, professional corporation, agriculture cooperative association, general partnership, limited partnership, limited liability partnership, and limited liability company, or any other legal or commercial entity.

"Division" means the business registration division of the department of commerce and consumer affairs.

"Document" means any executed article, agreement, affidavit, certificate, declaration, petition, application, statement, annual report, and every kind of paper, except correspondence, filed in the division in accordance with statutory requirement.

"Filed" means that a document has been received and entered of record by the division in accordance with statutory requirements.

"Official forms" mean forms adopted and provided by the division and which are required to be used by the public.

"Registrant" means the person to whom a certificate of registration of trade name, trademark, service mark, print, or label has been issued, and includes the assignee of a registrant.

"Unofficial forms" mean forms provided by the division for the convenience of the public, the use of which is optional. [Eff 5/10/69; am and ren §16-36-2, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; am and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §26-9)

§16-36-3 Filings. (a) Unless otherwise provided, all documents shall be:

- (1) Typewritten, photocopied, or printed in black ink on one side of the page. Standard pica or elite print or larger shall be used. Dot matrix printing may be accepted at the discretion of the division administrator if it is printed in black ink and if it is plainly legible;
- (2) Signed in black ink;
- (3) On bond paper which shall be white and 8-1/2 x 11 inches;
- (4) Plainly legible and if signatures cannot be read, names shall be typed below signatures;
- (5) Of permanent nature; and
- (6) In the English language.

(b) Unless otherwise provided, originals, and legible photocopied or faxed documents or electronic versions thereof approved by the division administrator, shall be accepted for filing. [Eff 5/10/69; am 9/4/79; am and ren §16-36-3, 7/30/81; am and comp 12/21/84; am 4/4/87; am and comp 2/6/88; am and comp 3/28/00; am and comp 11/22/02] (Auth: HRS §§26-9, 91-2) (Imp: HRS §91- 2)

§16-36-4 Forms and instructions. Except as otherwise provided by law, the following official forms shall be filed with the division:

- (1) X-1 Application for reservation of name;
- (2) T-1 Application for registration of trade name;

§16-36-4

- (3) T-2 Application for registration of trademark;
- (4) T-3 Application for registration of service mark;
- (5) Agricultural cooperative association annual report;
- (6) Domestic/foreign profit corporation annual report;
- (7) Domestic professional corporation annual report;
- (8) Domestic/foreign nonprofit corporation annual report;
- (9) Domestic/foreign general partnership annual statement;
- (10) Domestic/foreign limited partnership annual statement;
- (11) Domestic/foreign limited liability company annual report; and
- (12) Domestic/foreign limited liability partnership annual statement. [Eff 5/10/69; am and ren §16-36-4, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; am and comp 3/28/00; comp 11/22/02] (Auth: HRS §§26-9, 91-2) (Imp: HRS §§415-125, 415A-22, 415B-11, 421-22, 425-1, 425-157, 425D-203.5, 428-210, 482-2)

§16-36-5 Fees. (a) Statutory fees shall be paid at the time of submission of documents for filing. Payment for copies of documents reproduced or prepared by the division shall be made prior to actual reproduction or preparation. Payment for copies of publications shall be received before the publications are mailed or delivered.

(b) No refunds shall be made of fees lawfully imposed except in the case of special handling fees. Special handling fees may be refunded if it is determined that a special handling document has not been reviewed within a period set by the division administrator at the time the document is submitted. In case a document is rejected or withdrawn and is not resubmitted within ten days, the document is deemed not filed and the filing fee shall not be refunded.

(c) The fee for the duplication or copying of microfiche records shall be \$2.50 per microfiche. [Eff 5/10/69; am and ren §16-36-5, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; am and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§415-128, 415B-155, 425-12, 425-169, 425D-1107, 428-1301, 482-2, 482-3)

§16-36-5.5 Action on documents submitted to the division; automatic approval; extension. (a) Unless otherwise provided by law, all documents submitted to the division shall be accepted or rejected for filing within ninety days after the submission of completed documents.

(b) For purposes of this section, "completed documents" means documents that comply with the applicable requirements of this chapter and chapters 415, 415A, 415B, 421, 425, 425D, 428, and 482, HRS, as determined by the division administrator.

(c) After the ninety day period, the completed document shall be automatically accepted for filing by the division.

(d) The ninety day period shall be extended in the discretion of the division administrator in accordance with the provisions of section 91-13.5, HRS, provided that the extension shall not exceed an additional ninety days. [Eff and comp 3/28/00; comp 11/22/02] (Auth: HRS §§26-9, 91-13.5) (Imp: HRS §91-13.5)

§16-36-6 Repealed. [R 2/6/88]

§16-36-7 Repealed. [R 2/6/88]

§16-36-8 Repealed. [R 2/6/88]

§16-36-9 Repealed. [R 2/6/88]

## SUBCHAPTER 2

### PROCEDURES

#### §16-36-10 Filing of domestic profit and nonprofit corporation annual reports.

(a) All corporations shall deliver for filing the first annual report due after incorporation as of the end of the first calendar year, provided that any corporation incorporated after December 20 need not deliver for filing an annual report for the first calendar year in which they are incorporated.

(b) An annual report shall be filed annually even though a corporation may have been inactive for that period. [Eff 5/10/69; am 9/4/79; am and ren §16-36-10, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§415-125, 415-126, 415B-11, 415B-12)

§16-36-11 Filing of foreign profit and nonprofit corporation annual reports.

(a) All corporations shall deliver for filing the first annual report as of the end of the calendar year in which the corporation registered, provided that any corporation which registered after December 20 need not deliver for filing an annual report for the calendar year in which it registered.

(b) An annual report shall be delivered for filing annually even though a corporation may have been inactive for that period. [Eff 5/10/69; am 9/4/79; am and ren §16-36-11, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§415-125, 415-126, 415B-11, 415B-12)

§16-36-11.3 Filing of domestic and foreign general partnership annual statements. All domestic and foreign general partnerships shall deliver for filing the first annual statement as of the end of the calendar year in which the partnership registered, provided that any general partnership which registered after December 20 need not deliver for filing an annual statement for the calendar year in which it registered. [Eff and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §425-1)

§16-36-11.5 Filing of domestic and foreign limited partnership annual statements. All domestic and foreign limited partnerships shall deliver for filing the first annual statement as of the end of the calendar year in which the partnership registered, provided that any limited partnership which registered after December 20 need not deliver for filing an annual statement for the calendar year in which it registered. [Eff and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§425D-203.5, 425D-906.5)

§16-36-11.7 Filing of domestic and foreign limited liability partnership annual statements. All domestic and foreign limited liability partnerships shall deliver for filing the first annual report as of the end of the calendar year in which the limited liability partnership registered, provided that any limited liability partnership which registered after December 20 need not deliver for filing an annual statement for the calendar year in which it registered. [Eff and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §425-157)

§16-36-11.9 Filing of domestic and foreign limited liability company annual reports. All domestic and foreign limited liability companies shall deliver for filing the first annual report as of the end of the calendar year in which the limited liability company registered, provided that any limited liability company which registered after December 20 need not deliver for filing an annual report for the calendar year in which it registered. [Eff and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §428-210)

§16-36-12 Foreign business entity name; registration ownership; assignment of registration. (a) If the name of a foreign business entity registrant has been changed, the change may be recorded by the filing of a certificate by the proper state official that the name has been changed, together with the filing fee of \$10.

(b) If a foreign corporation registrant which has not qualified pursuant to chapters 415 and 415B, Hawaii Revised Statutes, is merged with and absorbed by another foreign business entity, or is involved in a consolidation, the change in the ownership of the registration may be recorded by the filing of a certificate by the proper state official certifying to the merger or consolidation, together with the filing fee of \$10.

(c) A trade name, trademark, service mark, print, or label registration may be assigned by the registrant by filing an executed copy of an assignment, together with the filing fee of \$10.

(d) The registration of a trade name, trademark, service mark, print, or label may be canceled by filing a request for cancellation, signed by the registrant.

(e) Renewals shall be filed not earlier than six months prior to the registration expiration date. [Eff 5/10/69; am and ren §16-36-12, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; am and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§482-2, 482-3, 482-8)

§16-36-12.5 Repealed. [R 3/28/00]

### SUBCHAPTER 3

#### STATEMENTS OF POLICY

§16-36-13 Penalties. (a) Penalties shall be assessed commencing fifteen days after the due date of an annual report, partnership statement, license fee, or of any other document required to be filed with the division.

(b) Penalties may be waived or reduced upon written request and only for good cause shown. [Eff 5/10/69; am and ren §16-36-13, 7/30/81; am and comp 12/21/84; am and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§415-135, 415B-157, 425-13, 425-170, 425D-1108, 428-1302)

§16-36-14 Requests for information. (a) Reasonable requests for information by the public shall be given at no charge in person or by mail. Requests for information by telephone for Oahu callers shall be limited to information available on on-line computer terminals and for neighbor island or out-of-state callers requests shall only be of a specific nature and shall not cause the employees to spend an unreasonable amount of time on the call; any other requests will require the caller to inspect and review the appropriate records at the division's office.

(b) Requests for lists of corporations, partnerships, licenses, etc., or for information which shall require considerable personnel time shall not be complied with. However, any person wishing to compile a list of firms, licensees, etc. may be permitted to do so upon proper request. Permission may be granted only if there is no interference with the normal work carried on by the employees. [Eff 5/10/69; am and ren §16-36-14, 7/30/81; am and comp 12/21/84; am 10/12/85; comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§92F-11, 92F-12, 415-55, 415B-10)

§16-36-15 Registration of trademarks, service marks, prints, and labels; corporation names, partnership names, limited liability company names, and trade names. (a) A proposed name or mark that is substantially identical to a registered name or mark shall be rejected and not accepted for registration. A name or mark is "substantially identical" if:



- (1) The only variation from an existing name or mark is the spelling of a number instead of the numerical symbol for the number. For example, "Twenty-Seven, Inc.", "27, Inc.", and "XXVII, Inc.";
- (2) The names or marks are pronounced the same and the only variation is that a word (or words) is spelled differently. For example, "The Flour Shop, Inc." or "The Flower Shop, Inc."; "Waimanalo Suns, Inc." or "Waimanalo Sons, Inc."; or "Beach Days, Inc." or "Beach Daze, Inc.";
- (3) The only variation from an existing name or mark is the business entity suffix, affix, prefix, or the use of the word "partner" (except in the case of a subsidiary relationship, or where the entities are affiliated and the entity that registered the existing name or mark consents to the use of its name or mark). For example, "Sampson, Inc.", "Sampson Corporation", "Sampson, Incorporated", "Sampson Company", "Sampson Limited Liability Company", "Sampson Partnership", "Sampson Partners", "Sampson Limited Partnership", and "Sampson Limited Liability Partnership";
- (4) The only variation from an existing name or mark is the use of "n", "-n-", or the use of the letter "n" between two or more words rather than two or more letters to connote "and", or the use of the letter "a" or the words "an", "and", "the", "of", "in", "at", "on", "to" or "for" or the Hawaiian language equivalent words of "da", "ka", "ke", "na", or "la". For example, "Oceanside Pier Honolulu, Inc.", "The Oceanside Pier of Honolulu, Inc.", and "An Oceanside Pier for Honolulu, Inc."; "Ka Hana Maiau, Inc." and "Hana Maiau, Inc."; or "Peaches and Cream, Inc.", "Peaches 'N Cream, Inc.", "Peaches-N-Cream, Inc.", and "Peaches 'N Cream, Inc.";
- (5) The only variation from an existing name or mark is the use of punctuation, spaces, or symbols. For example, "ABC, Inc." "A.B.C., Inc.", "A B C, Inc.", "AB&C, Inc.", and "A\*B\*C, Inc.";
- (6) The only variation from an existing name or mark is the double use of a business entity suffix or affix. For example, "Acme Construction, Inc." and "Acme Construction Company, Inc.";
- (7) The only variation from an existing name or mark is the use of a plural word or addition of a possessive "s". For example, "Acme Contractors, Inc.", "Acme's Contractor, Inc." and "Acmes Contractor, Inc.";
- (8) The only difference from an existing name or mark is a universally recognized abbreviation or shortened form of a word. For example,

- "Southeast Landscaping, Inc.", "S.E. Landscaping, Inc.", "SE Landscaping, Inc." and "S E Landscaping, Inc.";
- (9) The only variation from an existing name or mark is the use of the phrase "of Hawaii", or the word "Hawaii", or its recognized abbreviation "HI" at the end of the name, unless used by a subsidiary or associate entity, or unless the entity that registered the existing name or mark consents to the registration of the name or mark. For example, "Omni, Inc.", "Omni of Hawaii, Inc.", "Omni of HI, Inc.", "Omni Hawaii, Inc." and "Omni HI, Inc.";
  - (10) The only variation from an existing name or mark is the use of the word "Hawaii" or "Hawaiian" at the beginning of the name. For example, "Hawaii Flower Bouquet, Inc." and "Hawaiian Flower Bouquet, Inc."; and
  - (11) The only variation from an existing name or mark is the use of a number, or alphabetical or numerical symbol, in consecutive order indicating a close association with the name or mark currently on file. For example, "Acme Development I, Inc." and "Acme Development II, Inc."; or "Acme Development A, Inc.", and "Acme Development B, Inc.".
- (b) A name or mark is not "substantially identical" if:
    - (1) A comparison of the name or mark reveals a difference from the names on file with the division, unless the name is likely to be confused upon oral communication. For example, "Ice Cream Shop, Inc." and "Ice Cream Sweet Shop, Inc.";
    - (2) The name or mark contains a letter or letters, other than the plural or possessive "s", to distinguish it from names currently on file with the division. For example, "Star Decorating, Inc." and "Start Decorating, Inc.";
    - (3) The name or mark contains the addition of a suffix, prefix, or affix to a word or words contained therein to make it different from names currently on file with the division. For example, "Finance Specialists, Inc.", "Financing Specialists, Inc.", "Financial Specialists, Inc." and "Financial Specialties, Inc.";
    - (4) The name or mark contains a variation in the sequencing or arrangement of the same words as contained in names currently on file with the division. For example, "Systems Analysis and Research Consultants, Inc." and "Systems Research and Analysis Consultants, Inc.".

(c) In making determinations as to whether names or marks submitted for registration are substantially identical to registered names or marks, the following factors shall be considered:

- (1) Purely geographic names, or landmarks registered with a recognized historical registry, shall not be registered even with the inclusion of a business entity suffix, affix or prefix. For example, "Honolulu", "Olomana", "Wailuku, Maui", "Kailua, Oahu", "Diamond Head", "Aloha Tower", "Pearl Harbor", "North Kohala", "King Street", "Beretania Street", "San Francisco", "Paris", "Belgium", and "Hawaii Foreign Trade Zone";
- (2) Coined words may be restricted to one registrant unless consent is granted by the registrant. For example, "AMFAC" or "JALPAK"; and
- (3) Deceptive words, symbols, or phrases shall not be registered.
- (d) Some filings are prohibited under federal or state law. The following are examples of some of these prohibitions:

- (1) The terms "financial institution", "bank", "banker", "banking", "banc", "savings bank", "savings and loan", "savings association", "financial services loan company", "credit union", "trust company", "intrapacific bank", "international banking corporation", or "trust" shall not be used unless authorized to engage in business as a financial institution in this State or is otherwise approved by the commissioner of financial institutions pursuant to chapter 412, HRS. No financial institution may use words designating another type of financial institution, or words of similar import, or translations of such words, in a manner that suggests or might tend to lead others into believing that it is that type of financial institution;
- (2) Pursuant to 36 U.S.C. §380, as amended, the words "Olympic", "Olympiad", "Citius Altius Fortius", or the Olympic ring symbol shall not be used without the approval of the United States Olympic Committee except for organizations using said name prior to September 21, 1950;
- (3) Federally registered names listed in Title 36 of the U.S. Code (patriotic societies and observances) shall not be available for use;
- (4) The words "Postal Service" or "Post Office" shall not be used;
- (5) Pursuant to section 431:4-104(d)(1), HRS, as amended, domestic insurance corporations shall utilize the word "insurance" in the name and, as the last word thereof, one of the words "corporation", "incorporated", "limited", or one of the

§16-36-15

- abbreviations "corp.", "inc.", or "ltd."; and in the case of the reciprocal insurer, the name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting";
- (6) Pursuant to section 466-10, HRS, as amended, the words "certified public accountant", "public accountant" or the abbreviations "CPA" or "PA" shall not be used unless the applicant is licensed in accordance with chapter 466, HRS;
  - (7) The use of the word "cooperative" shall be restricted to cooperative associations pursuant to chapters 421 and 421C, HRS, as amended, and to cooperative corporations pursuant to chapters 421H and 421I, HRS, as amended; and
  - (8) Pursuant to section 449-5, HRS, as amended, the words "escrow", "escrow depository" or any other word or phrase having the same or similar meaning shall not be used unless the applicant is licensed in accordance with chapter 449, HRS.
- (e) In addition to the above, a proposed name or mark shall:
- (1) Not be prohibited by law;
  - (2) Be filed in good faith with the intent of conducting a legitimate business and not to defraud, confuse, or mislead the public; and
  - (3) Not state or imply that it is connected with a governmental agency, unless otherwise permitted by a governmental agency or law.
- (f) If a name or mark is rejected, the division shall notify an applicant of the basis for the rejection. [Eff 5/10/69; am 9/4/79; am and ren §16-36-15, 7/30/81; am and comp 12/21/84; comp 2/6/88; am and comp 3/28/00 comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §§415-8, 415B-7, 425-6, 425-164, 425D-102, 428-105, 482-3, 482-4)

§16-36-16 Investment clubs. Any investment club whose purpose is to invest its assets solely in securities for the education and benefit of its members and whose business is only with registered securities dealers in Hawaii shall not be considered to be conducting business in the State, and compliance with the provisions of the general partnership law shall not be required. [Eff 5/10/69; am and ren §16-36-16, 7/30/81; am and comp 12/21/84; am 10/12/85; am and comp 2/6/88; comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §425-1)

§16-36-17 Repealed. [R 3/28/00]

## SUBCHAPTER 4

### ADMINISTRATIVE PROCEDURE

§16-36-18 Reconsideration. (a) Any person aggrieved by any action of the division may request a reconsideration within thirty days of the action and shall specifically point out in writing why the action is improper, and shall include all arguments, authorities, factors, affidavits, exhibits, and any other matter which the person may deem relevant.

(b) The request for reconsideration shall not operate as a stay of the division's action. [Eff 5/10/69; am 9/4/79; am and ren §16-36-18, 7/30/81; am and comp 12/21/84; comp 2/6/88; am and comp 3/28/00; comp 11/22/02] (Auth: HRS §26-9) (Imp: HRS §26-9)

Amendments to and compilation of Chapter 16-36, Hawaii Administrative Rules, on the Summary page dated October 18, 2002, were adopted on October 18, 2002, following a public hearing held on the same date, after public notices were given in the Honolulu Star Bulletin, The Garden Island, the Hawaii Tribune-Herald, West Hawaii Today and The Maui News on September 18, 2002.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Kathryn S. Matayoshi

KATHRYN S. MATAYOSHI, Director  
Department of Commerce and Consumer Affairs

APPROVED AS TO FORM:                      Date 10/31/02

/s/ Rodney J. Tam

Deputy Attorney General

APPROVED:                                      Date 11/11/02

/s/ Benjamin J. Cayetano

BENJAMIN J. CAYETANO

Governor  
State of Hawaii

November 12, 2002

Filed  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-36  
Hawaii Administrative Rules

October 18, 2002

SUMMARY

1. §16-36-3 is amended.
2. Chapter 36 is compiled.

*This material can be made available for individuals with special needs. Please call the Division Secretary, Business Registration Division, DCCA, at 586-2744, to submit your request.*